

Office of Financial and Insurance Regulation

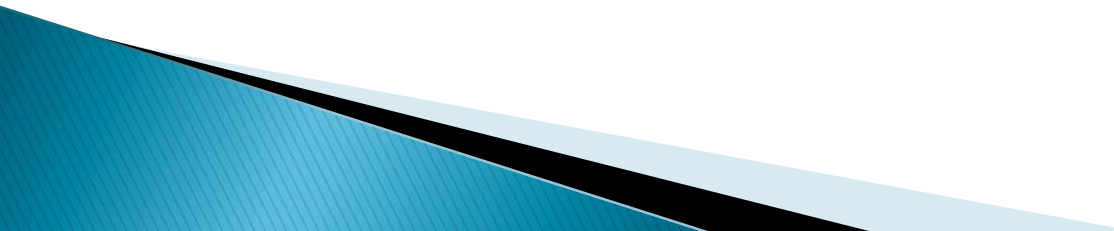
MORTGAGE BROKERS, LENDERS,
SERVICERS AND LOAN ORIGINATORS
INFORMATIONAL SEMINAR



Office of Financial and Insurance Regulation

DISCLAIMER:

The opinions presented here today are those of the presenters and do not necessarily reflect the views of Commissioner Clinton.

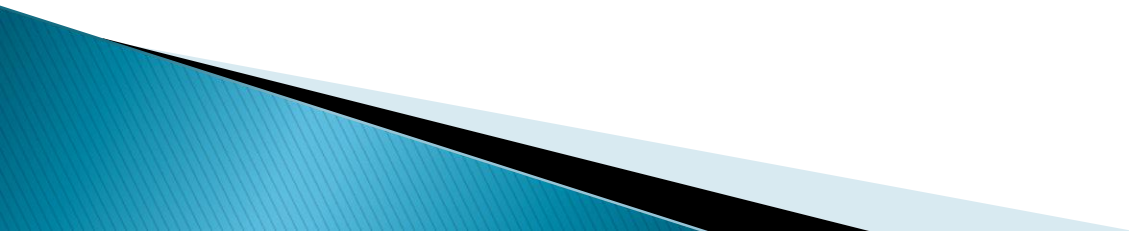


Welcome

Stephen R. Hilker

Senior Deputy Commissioner

Office of Financial and Insurance Regulation



SEMINAR AGENDA

- ▶ Introduction

Kirt Gundry, Director, Mortgage Examination and Investigations

- ▶ Licensing

Mark Weigold, Director, Consumer Finance Licensing and Examination

- ▶ Complaints

Melanie Near, Manager, Consumer Services

- ▶ Examinations and Investigations

Holly Mroz, Mortgage Examiner

- ▶ Enforcement

Marlon Roberts, Staff Attorney, Office of General Counsel

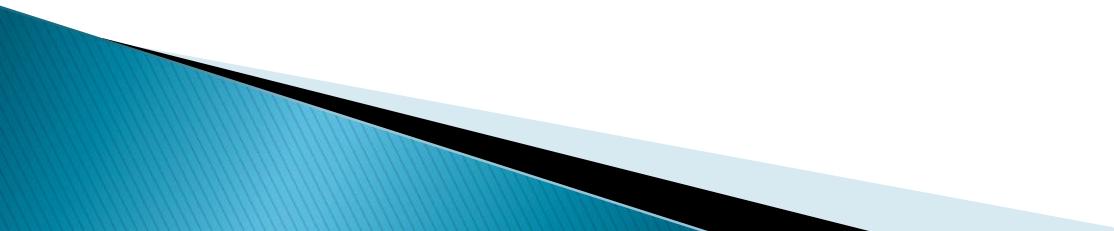
- ▶ Q & A

Office of Financial Insurance and Regulation (OFIR)

Contact OFIR:

- ▶ Main Address
 - 611 W. Ottawa, 3rd Fl., Lansing, MI 48933
 - ▶ Mailing Address
 - P.O. Box 30220, Lansing, MI 48909
 - ▶ www.michigan.gov/ofir
 - ▶ OFIR-fin-info@michigan.gov
 - ▶ 1-877-999-6442
- 

Additional Resources

- www.hud.gov
 - www.ftc.gov
 - www.consumer.gov
 - www.fdic.gov
 - www.federalreserve.gov
 - www.consumerfinance.gov
 - www.mortgage.nationwidelicensingsystem.org
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Licensee, Registrant & Mortgage Loan Originator

Consumer Finance Section



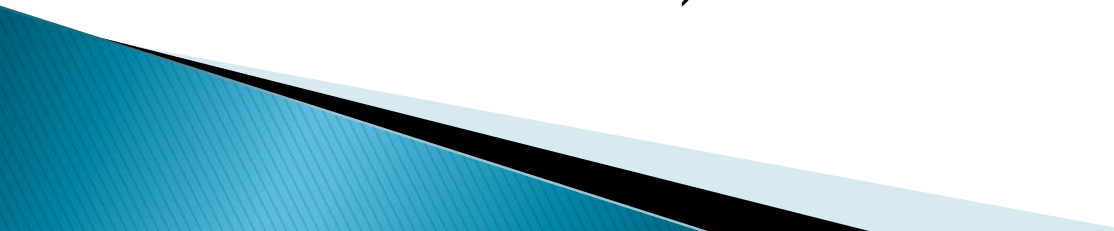
Mortgage Industry – Statutes

- ▶ 1st Mortgage Broker Lender Servicer Licensees/Registrants
 - PA 173 of 1987
- ▶ 2nd Mortgage Broker Lender Servicer Licensees/Registrants
 - PA 125 of 1981
- ▶ Consumer Financial Services Class I/II
 - PA 161 of 1988
- ▶ Mortgage Loan Originators
 - PA 75 of 2009

Michigan utilizes NMLS for licensing and registration of the mortgage industry.



NMLS Forms

- ▶ 1st and 2nd Mortgage Licensee/Registrants
 - MU1
 - MU2
 - ▶ Consumer Financial Services Class I/II Licensees
 - MU1
 - MU2
 - ▶ Exempt Companies
 - MU1
 - MU2
 - ▶ Mortgage Loan Originators
 - MU4
 - ▶ Recent NMLS Program Expansion (Company and Individual Forms)
- 

Mortgage Loan Originator (MLO) Application

How to Apply

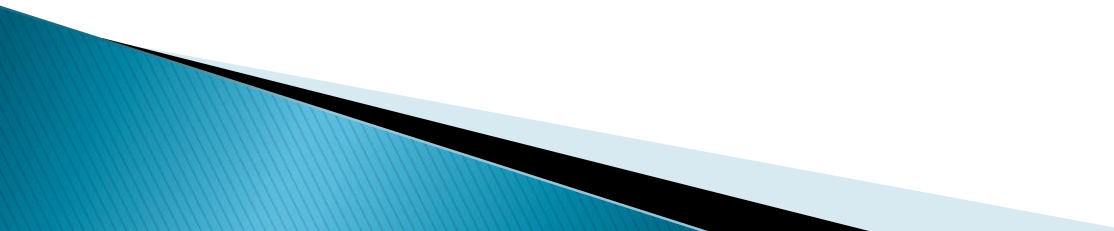
- ▶ Enter NMLS and obtain unique ID number
- ▶ Complete 20-hour NMLS pre-licensing education course
- ▶ Pass the SAFE National and Michigan exams
- ▶ Submit an MU4 application form through NMLS
- ▶ Authorize Credit Report through NMLS
- ▶ Request fingerprints and criminal background check in NMLS
- ▶ Request sponsorship (employer stated on MU4 must match sponsor)
- ▶ Submit MLO individual bond to OFIR, or submit evidence MLO applicant is included on company MLO bond

All deficiencies must be cleared within 6 months from the date of license request or application may be abandoned.

MLO Bond Requirement – Individual

Individual Bond (FIS-2135)

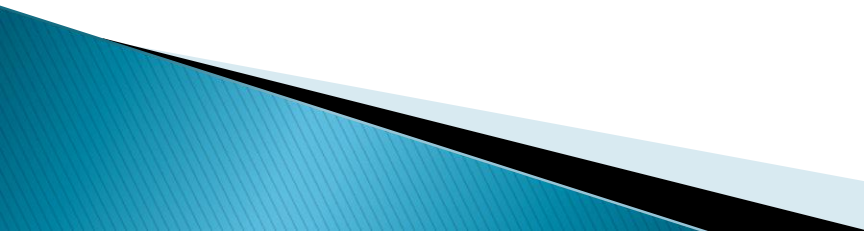
► Individual Bond Amounts

- \$10,000 first time applicant
 - \$10,000 MLO not closing loans or closing less than \$12 million in the preceding calendar year
 - \$25,000 MLO closing \$12 million or more but less than \$24 million in the preceding calendar year
 - \$50,000 MLO closing \$24 million or more in the preceding calendar year
- 

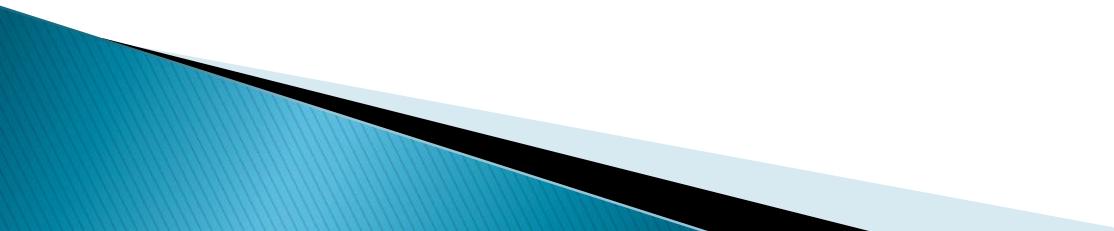
MLO Bond Requirement – Company

Company Bond (FIS-2137)


▶ Company Bond Amounts

- \$50,000 if the sum of the principal amounts of mortgage loans closed or modified by the person in the preceding calendar year is less than \$12 million
 - \$150,000 if the sum of the principal amounts of mortgage loans closed or modified by the person in the preceding calendar year is \$12 million or more and less than \$24 million
 - \$250,000 if the sum of the principal amounts of mortgage loans closed or modified by the person in the preceding calendar year is \$24 million or more
- 

MLO License Minimum Requirements

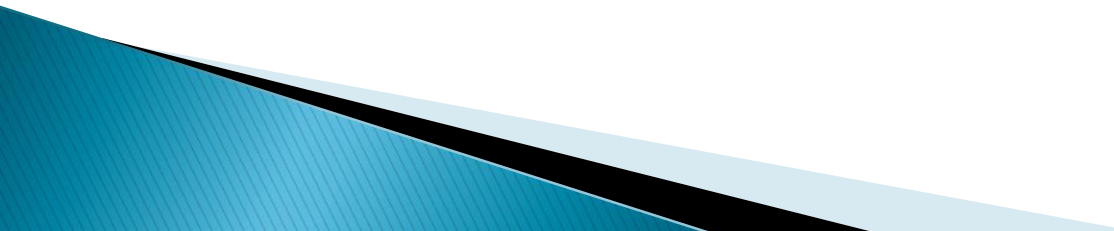
- ▶ Is not subject to a Prohibition Order
 - ▶ Has never had a MLO license revoked
 - ▶ Has never been convicted of a felony or misdemeanor involving fraud, dishonesty, or a breach of trust, money laundering, embezzlement, forgery, a financial transaction, or securities
 - ▶ Has never been convicted of a felony within 10 years of application
- 

MLO License Minimum Requirements (Continued)

- ▶ Demonstrated financial responsibility, character, and general fitness that commands the confidence of the community and warrants a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this act
 - ▶ Completed pre-licensing education
 - ▶ Successfully passed the SAFE National and State exams
 - ▶ Sponsorship obtained
- 

Maintaining Your MLO License

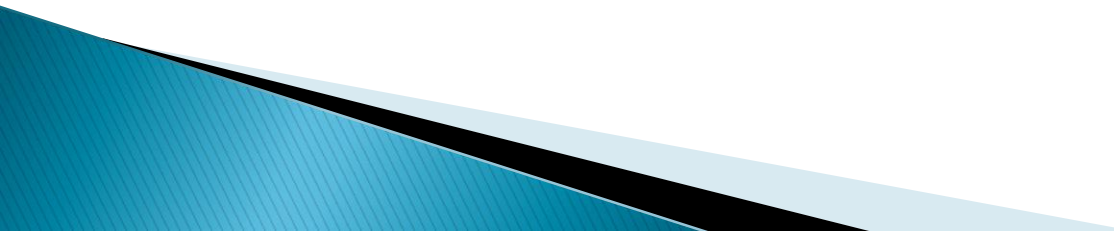
MLO Continuing Education Requirements

- ▶ 8 hours annual continuing education
 - 3 hours of federal law and regulations
 - 2 hours of ethics, including instruction on fraud, consumer protection, and fair lending issues
 - 2 hours of training related to lending standards for nontraditional mortgage product marketplace
 - ▶ Continuing Education (CE) may be taken in a classroom, online, or by any other means approved by the NMLS during the year credit is given
 - ▶ Approved listing of educators is located on NMLS
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Maintaining Your MLO License

(Continued)

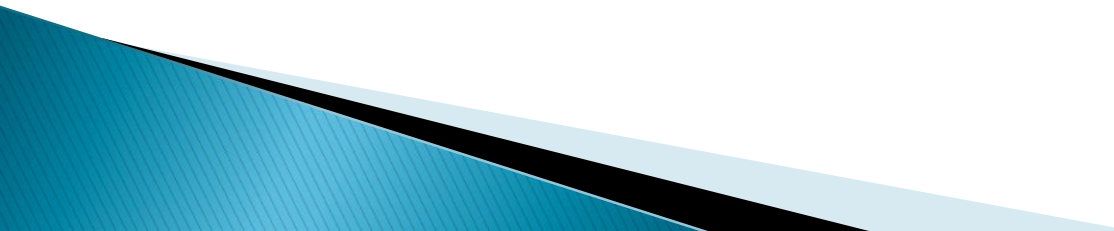
MLO License Renewal

- ▶ Renewal is completed through NMLS, including payment of fees (Exception: License approvals effective after November 1)
 - ▶ Records in NMLS must be up-to-date
 - ▶ Deficiencies need to be resolved
 - ▶ Continuing education is required unless the license is issued during the year of renewal
 - ▶ Individual or company surety bond
- 

Maintaining Your MLO License

(Continued)

MLO License Renewal

- ▶ Due by December 31st
 - ▶ NMLS will change license status to “Terminated–Failed to Renew” if renewal has not been approved by December 31st
 - ▶ NMLS will change license status to “Terminated–Expired” on March 1st if renewal or reinstatement is not approved
 - ▶ Late fee penalty may be assessed \$25/day up to \$1,000 for renewal fees received after December 31st
- 

Maintaining Your MLO License

(Continued)

MLO License Amendments

- Name or residential address
 - \$15 fee paid directly to OFIR
 - Amend MU4
 - Bond rider or company notification of name change
- Employment/Sponsor termination
 - Amend MU4
 - Remove sponsor
 - NMLS status will change to Approved-Inactive

Maintaining Your MLO License (Continued)

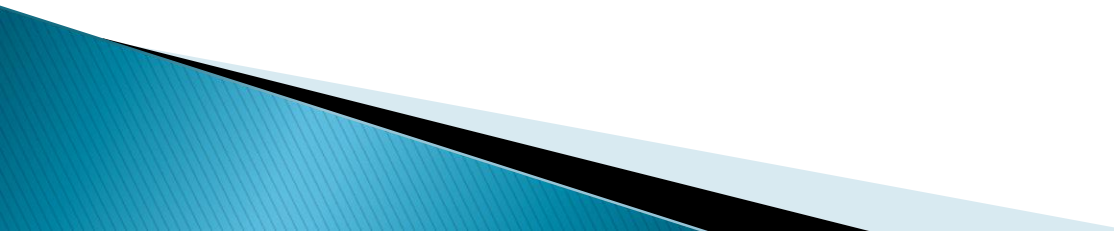
- New Employer/Sponsor
 - \$100 fee paid through NMLS
 - Amend MU4
 - Request new sponsor
 - Bond
 - If covered under new company bond, proof of coverage must be provided to OFIR
 - NMLS status will change to “Approved” if new employer/sponsor is a Michigan licensed, registered or exempt company in NMLS

Reapplying for MLO Licensure

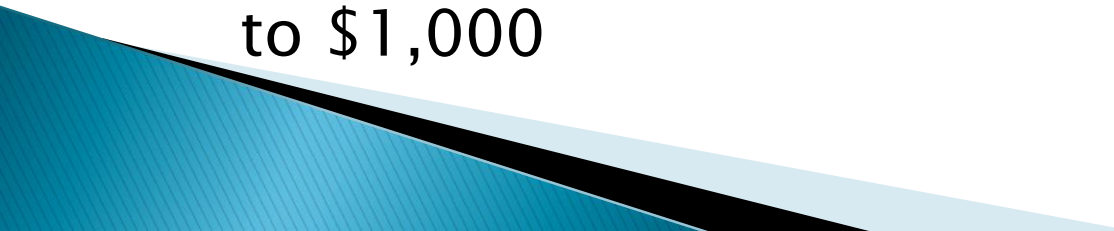
All MLO license application requirements must be met, EXCEPT:

- National and state exams
 - If it has been five years since valid MLO license was held. Sec. 13(4)(d)
- Pre-licensing education
 - Sec. 11(7)

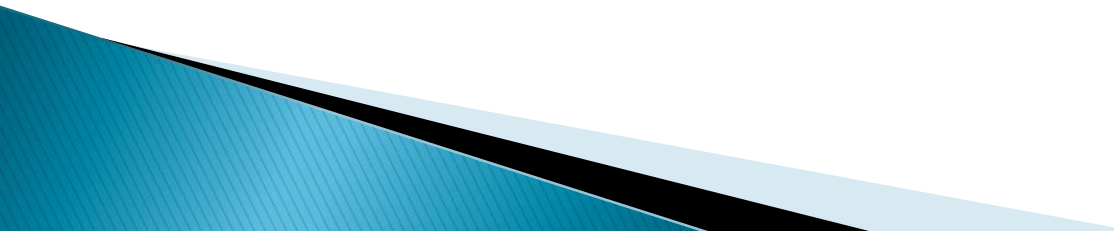
Maintaining Your Company License

- ▶ Annual Reports
 - ▶ Fiscal Year–End Financial Statements
 - ▶ Amendments and Changes
 - ▶ Changes in Ownership
 - ▶ Renewals
- 

Annual Reports

- ▶ 1st and 2nd Mortgage Licensees/Registrants
 - Completed annually online via the OFIR website parser
 - Report is required to provide accurate data for operating/renewal fee assessment
 - ▶ Consumer Financial Services Licensees
 - Completed annually in paper form
 - Report is required to provide accurate data for operating/renewal fee assessment
 - ▶ Commissioner sets due date; typically due by March 1 of each year
 - ▶ Late fee penalty may be assessed at \$25/day up to \$1,000
- 

Fiscal Year–End Financial Statements


- ▶ 1st and 2nd Mortgage Licensees/Registrants
 - ▶ Consumer Financial Services Licensees
 - ▶ Financial statements are to be uploaded into NMLS within 90 days of the fiscal year–end
 - ▶ Late fee penalty may be assessed at \$25/day up to \$1,000
- 

Company Amendments and Changes

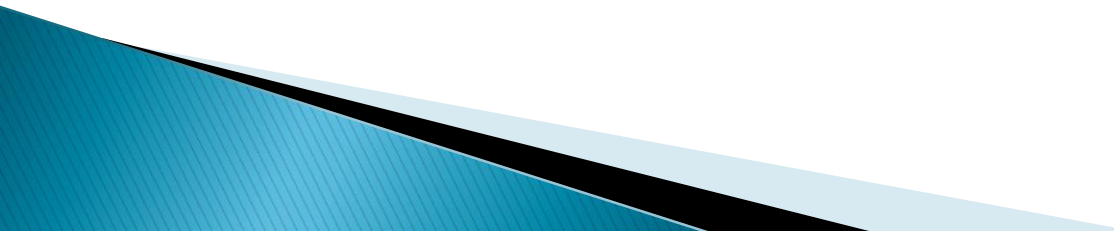
Amendments

- \$50 fee paid through NMLS
- Business address
- Name (including DBAs)
- Duplicate Certificates

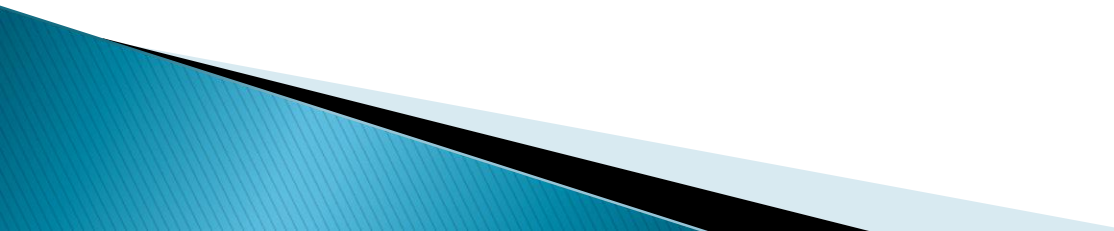
Changes

- Mailing address, telephone number, fax number, website address, e-mail address amendments
 - Branch office location additions and deletions
 - Change in company officials
 - Surrendering a license or registration
- 

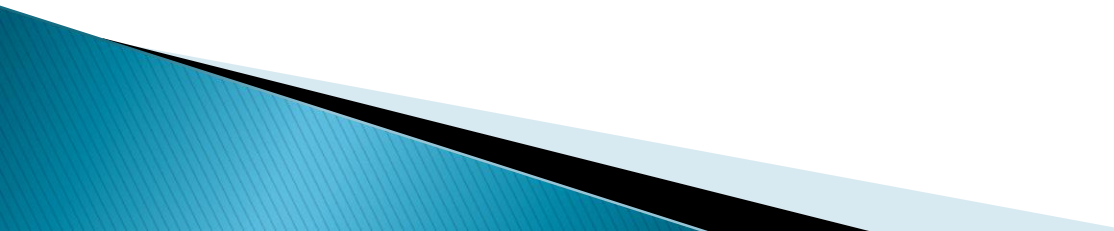
Change in Ownership

- ▶ Report all changes in ownership to OFIR by submitting NMLS Pre-Notification forms
 - ▶ Change in ownership greater than 25% in the aggregate is considered a transfer
 - ▶ A 1st mortgage registration cannot be transferred
 - ▶ Ownership transfers require the Commissioner's prior approval
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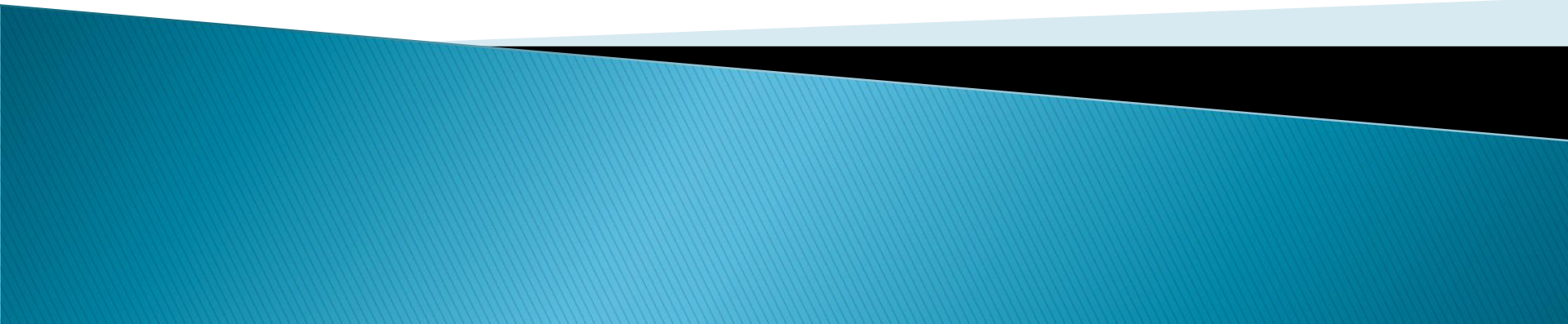
Renewals

- ▶ Renewal request and attestation will be made through NMLS
 - ▶ Records in NMLS must be up-to-date
 - ▶ Deficiencies must be resolved
 - ▶ Renewal surety bond and payment of invoice will be made directly to OFIR
- 

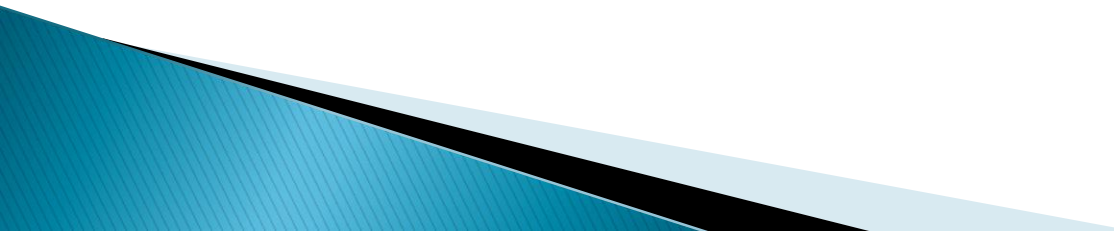
Miscellaneous

- ▶ SB 908 – Loan Modification Language
 - ▶ Temporary/Transitional License
 - MLO change of employment from a depository financial institution (i.e. bank)
 - ▶ Uniform state test
 - ▶ De minimus loan originations
 - ▶ Mortgage Industry Advisory Board (MIAB)
 - ▶ NLMS expansion
 - ▶ “Domestic” corporation to LLC
- 

COMPLAINTS



Consumer Services Division

- ▶ Provides consumer assistance activities, including complaint handling and consumer outreach programs
 - ▶ Coordinates investigations of insurance entities
 - ▶ Oversees the Communication Center, the first point of contact for all calls and visitors
- 

Consumer Assistance Section

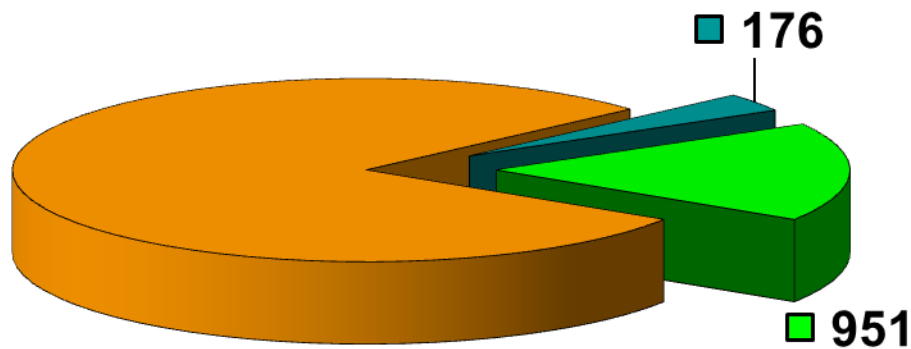
Assists consumers with insurance and financial services problems. OFIR licenses and regulates the following:

OFIR is responsible for the regulation of:

- ▶ 8,406 consumer finance licensees and registrants
- ▶ Blue Cross Blue Shield of Michigan (BCBSM)
- ▶ 26 health maintenance organizations (HMOs)
- ▶ 111 banks
- ▶ 168 domestic insurance companies
- ▶ 199 credit unions
- ▶ 1,460 foreign insurance companies
- ▶ 400 investment advisers
- ▶ 1,942 securities broker-dealers
- ▶ 193,022 insurance agents
- ▶ 144,167 securities agents
- ▶ 10,364 investment adviser representatives
- ▶ 26 Living Care facilities

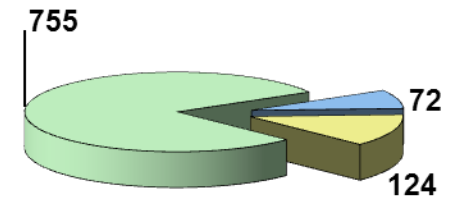
As of March 19, 2012

In 2011, OFIR responded to more than 5,450 consumer complaints.



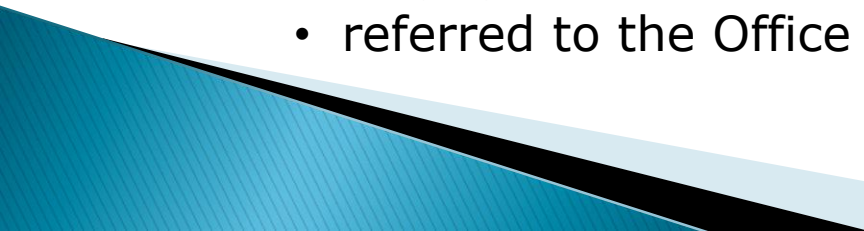
■ 4332

■ Financial Institutions ■ Insurance ■ Securities



■ Banks
■ Credit Unions
■ Non-depository

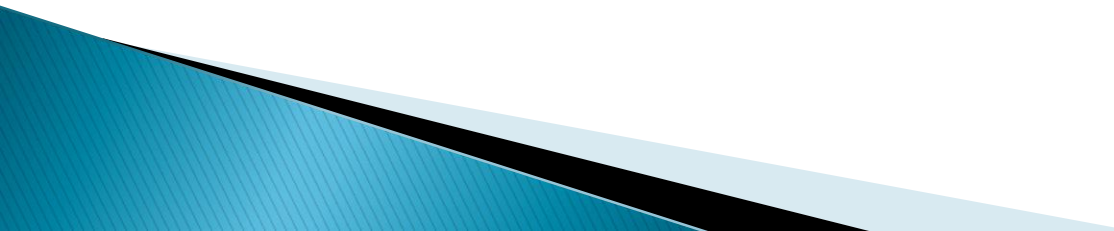
OFIR does not regulate:

- ▶ Nationally chartered banks
 - regulated by the Office of the Comptroller of the Currency (OCC)
 - ▶ Federal savings banks (thrift institutions)
 - regulated by the OCC
 - ▶ Bank holding companies
 - regulated by the Federal Reserve
 - ▶ Banks chartered by other states
 - regulated by the domiciliary state bank regulator
 - ▶ Federally-chartered credit unions
 - regulated by the National Credit Union Administration (NCUA)
 - ▶ Mortgage modification companies
 - referred to the Office of the Attorney General
- 

Our Goals

- Educate the consumer
- Make sure the consumer is treated fairly
- Help bring you into compliance

Common Mortgage Complaints

- Payment Issues
 - Foreclosure
 - Fees
 - Loan Modification
 - Escrow Accounts
 - Misrepresentation
 - Unlicensed Activity
 - Fraud
- 

Complaint Process



Complaint Process (Continued)

Step 1

Welcome



OFIR is the State of Michigan agency responsible for regulating Michigan's financial industries, including banks, credit unions, insurance, securities and mortgage companies. The agency consists of over 350 professionals dedicated to protecting Michigan consumers by ensuring the companies that it regulates are safe and sound, follow state and federal law, and are entitled to the public confidence.

OFIR Consumer Hotline 877-999-6442

Consumer

- [How to File a Complaint](#)
- [Health Insurance Information](#)
- [Purchasing Auto Insurance](#)
- [Publications](#)
- [SERFF Filing Search Portal](#)

Industry

- [Insurance](#)
- [Consumer Finance](#)
- [Credit Union](#)
- [Bank and Trust](#)
- [Securities](#)
- [Licensing](#)

Consumer Lenders (Non-Depository)

- [Complaint Form and brochure "Guide to Filing a Complaint" \(FIS 1010\)](#) PDF
- [Debt Management Complaint Form \(FIS 0590\)](#) PDF
- [How to File A Bond Claim against a bond posted with OFIR by a mortgage broker, lender or servicer](#)
- [Proof of Claim Against a Bond \(FIS 0033\)](#) PDF

Instructions for Filing form "FIS 0033 Proof of Claim Against a Bond" posted by Mortgage Brokers, Lenders, and

Step 2

Step 3

RS 1010 (5/11) Office of Financial & Insurance Regulation

Financial Institution Complaint Form

We only have authority over the financial institutions OFIR charters or licenses. Call us or use our hotline or website for a list of agencies that may be able to help you with complaints against financial institutions that we don't regulate.

My Name

Name of FINANCIAL INSTITUTION this complaint is about

Address

Company Address

City

State

Zip

City

State

Zip

Home phone number

Work phone number

()

()

Company phone number

Your account number (if applicable)

()

Your email address

Name of the person or persons you dealt with at the Financial Institution

Type of financial product my complaint is about:

☐ Checking/Draft Account

☐ Fees

☐ Money Transmission Services

☐ Credit Card

☐ Installment Loan

☐ Mortgage Loan

☐ Deferred Payment (payday lending)

☐ Insurance

☐ Savings/Share Account

☐ Escrow Account

☐ Interest Rate

☐ Other

Have you hired an attorney to represent you in this matter? ☐ Yes ☐ No

Have you filed a lawsuit in this matter? ☐ Yes ☐ No

Details of my complaint:

Please list events in the order they happened. Attach additional pages if needed. If possible, please use letter size paper (8 1/2 x 11) for all attachments.

Reviewing documents often helps us understand important details of your complaint.

Please attach copies of your statements, cancelled checks, correspondence or other documents that will help us review your complaint.

Always send copies. Never send original documents.

Please mail your complaint to:

OFIR - Consumer Services

PO Box 30220

Lansing, MI 48909-7720

Or fax to: (517) 241-3991

Or Email to: ofir-ins-info@michigan.gov

I authorize the Office of Financial and Insurance Regulation to review and release any information to any company, agency or licensee involved in this matter. I authorize the financial entity to release all records relating to this complaint to OFIR in order to resolve this complaint. I represent that I have the proper authority to execute this release.

Signature

Date signed

Michigan law, including Section 487.2101 of the Michigan Compiled Laws, authorizes the review of complaints involving Debt Management Companies. Completion of this form is voluntary and helps us resolve your claim.

LARA
LICENSING AND REGULATORY AFFAIRS
CUSTOMER SERVICE, BUSINESS SERVICES

Michigan Department of Licensing and Regulatory Affairs

LARA is an equal opportunity employer/program.

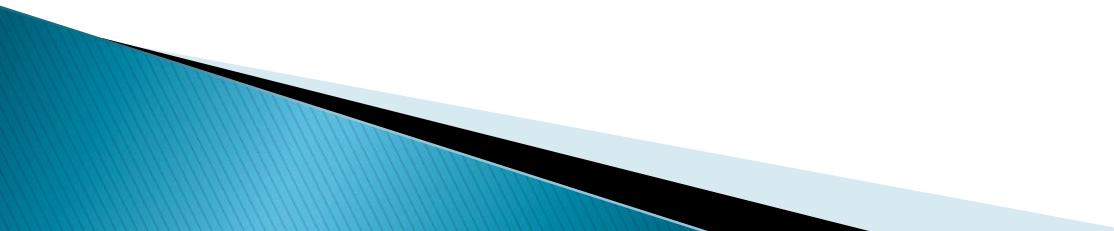
Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

Visit OFIR online at: www.michigan.gov/ofir Phone OFIR toll-free at: 1-877-699-6442

Complaint Process (Continued)

- ▶ Complaint arrives
- ▶ Assigned to analyst
- ▶ Forwarded to licensee or financial institution
- ▶ Licensee/financial institution response due in 21 calendar days
- ▶ Analyst reviews submitted information from both the consumer and licensee
- ▶ Analyst
 - Closes complaint
 - Requests additional information
 - Provides referral to investigations if necessary

Licensee/Company Requirements

- ▶ Respond within 21 calendar days
 - ▶ Provide two copies of the response
 - ▶ Address each issue raised by the complainant
 - ▶ Provide supporting documentation
 - ▶ Include file #, complainant name, and company contact information
- 

► Responses can be sent by

- Fax to: 517-241-3991

or

- Mail to:

Office of Financial and Insurance Regulation
Consumer Services Division
PO Box 30220, Lansing, MI 48909

or

- Overnight delivery to:

Office of Financial and Insurance Regulation
Consumer Services Division
611 W. Ottawa St., 3rd Floor, Lansing, MI 48933



What We Can/Cannot Do

Can

- Investigate complaints against licenses accused of violating federal and state laws/regulations
- Interpret statute
- Bring administrative actions or refer to Attorney General for civil or criminal prosecution

Cannot

- Act as court of law
- Act as an attorney or give legal advice
- Take action in matters involving internal affairs of a business



Business to Business Complaints

- ▶ Consumer Services will not intervene in contractual disputes; however, if a dispute involves an alleged violation of the Mortgage Brokers, Lenders, and Servicers Licensing Act our Mortgage Examination Section may
- ▶ You must provide documentation to support the alleged complaint. If a complaint is opened OFIR is impartial – OFIR will determine:
 - Is consumer harmed by activity?
 - Is activity violation of mortgage brokers, lenders, and servicers licensing act?

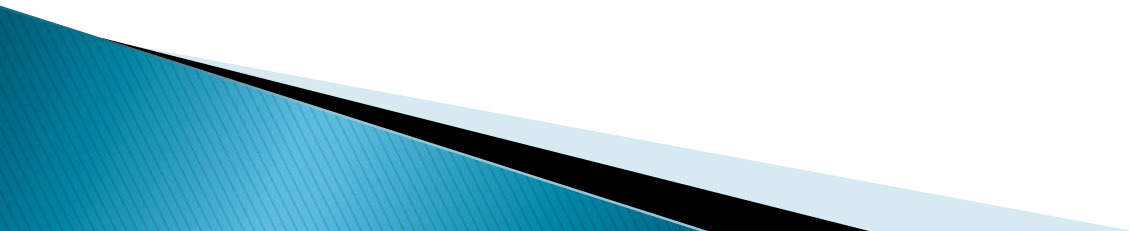
Summary

Purpose of Consumer Services is to:

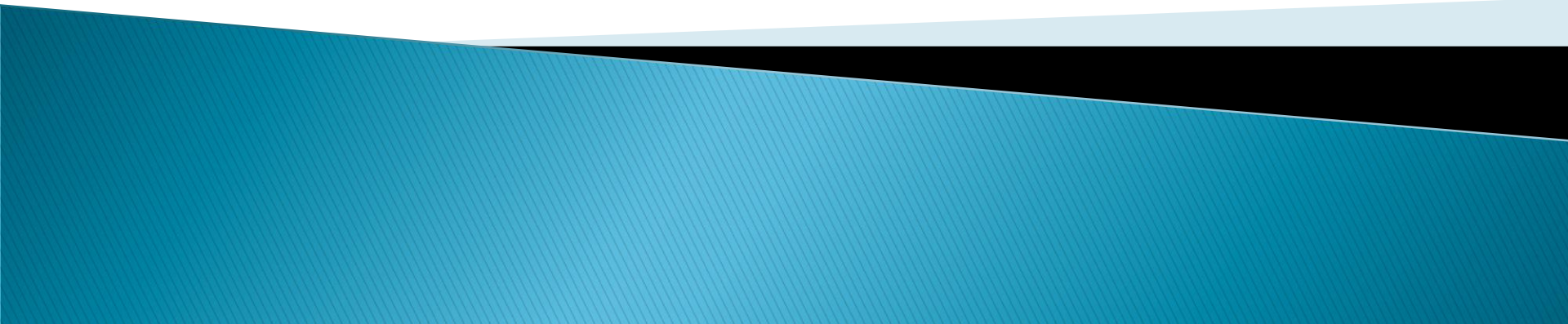
- ▶ Ensure consumers are treated fairly and in accordance with the law
- ▶ To detect violations of law and take appropriate action

Office of Financial and Insurance Regulation

15 Minute Break



EXAMINATIONS AND INVESTIGATIONS



How Does OFIR Select Who to Examine?

➤ Risk-Based

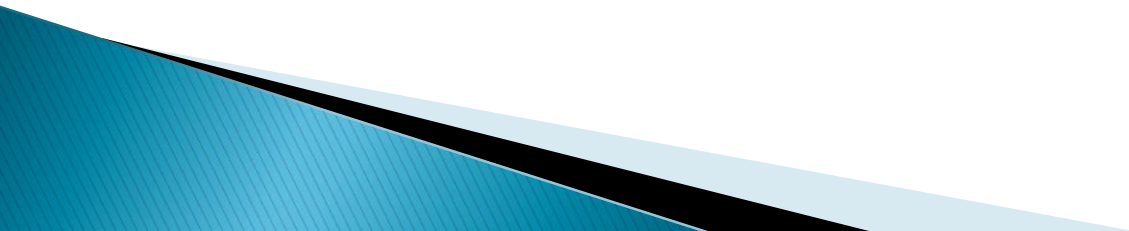
- Complaint record
- Annual report and financial statement filings

➤ Routine

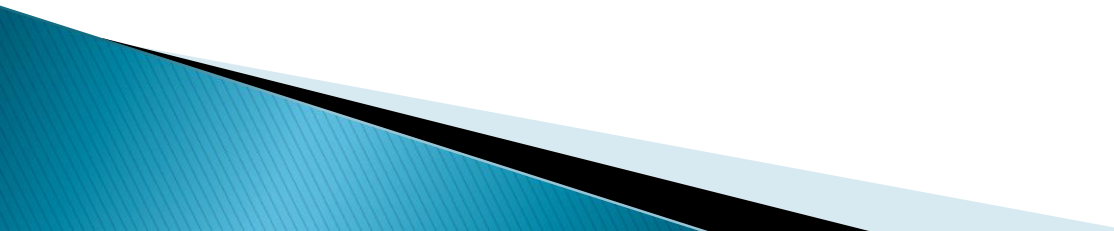
- Rotating schedule
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Exam vs. Investigation

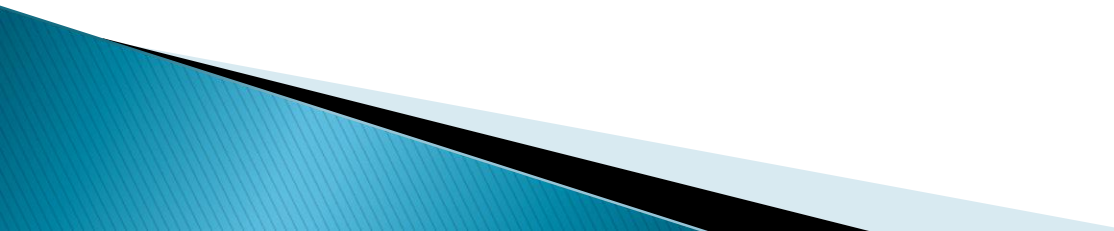
- An exam is review of a sample of records to determine compliance with law
- An investigation is a focused exam



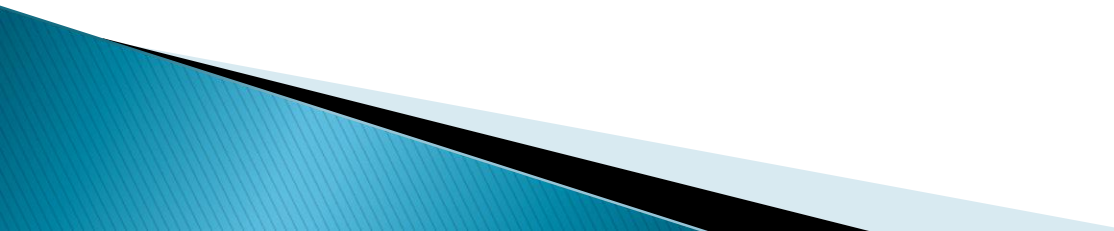
What Types of Exams are Conducted?

- ▶ On-Site
 - ▶ Off-Site
 - ▶ Combination
 - ▶ ComplianceEase
- 

How to be Ready for an Exam

- ▶ Know your system
 - ▶ Be familiar with the laws (state & federal)
 - ▶ Maintain policies & procedures
 - ▶ Stay on top of changes
 - ▶ Retain documentation
 - ▶ Be organized
- 

What Happens During an Exam?

- ▶ Introduction/exam set-up phone call or visit
 - ▶ Provide officer/manager questionnaire
 - Review info provided, such as financial records and policies and procedures
 - ▶ Review compliance with MLO licensing
 - ▶ Review loan files
 - ▶ Exit conference
- 

What Happens After an Exam?

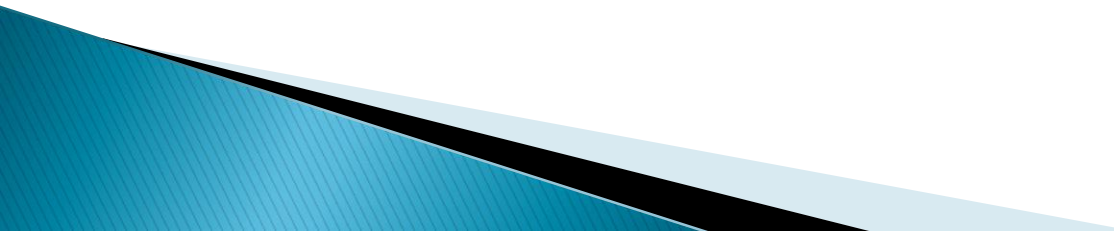
- ▶ You will receive an examination report and be asked to respond
 - Two things we look for in response:
 - 1) Steps you've taken to address a specific problem (i.e. refunds to consumers, deposit funds into escrow to cure a deficiency)
 - 2) Steps you've taken to prevent the general nature of the problem from recurring (i.e. employee training or implementing policies and procedures).

What Happens After an Exam?


(Continued)

- After you've replied, then what?
 - We may ask for more information
 - The exam may be closed
 - Referred to OFIR attorney for further action

What Laws do We Look for Compliance With?


- Mortgage Brokers, Lenders, and Servicers Licensing Act – MCL 445.1651
 - Mortgage Loan Originator Licensing Act – MCL 493.131
 - Secondary Mortgage Loan Act – MCL 493.51
 - Consumer Financial Services Act – MCL 487.2051
 - Consumer Mortgage Protection Act – MCL 445.1631
 - Mortgage Lending Practices Act – MCL 445.1601
- 

What Laws do We Look for Compliance With? (Continued)

- ▶ Regulation X – RESPA
 - ▶ Regulation Z – TILA
 - ▶ Regulation B – ECOA
 - ▶ Fair Credit Reporting Act
 - ▶ Various FTC Rules
 - Safeguard Rule
 - Red Flags Rule (ID Theft Prevention)
 - Risk-Based Pricing Rule
- 

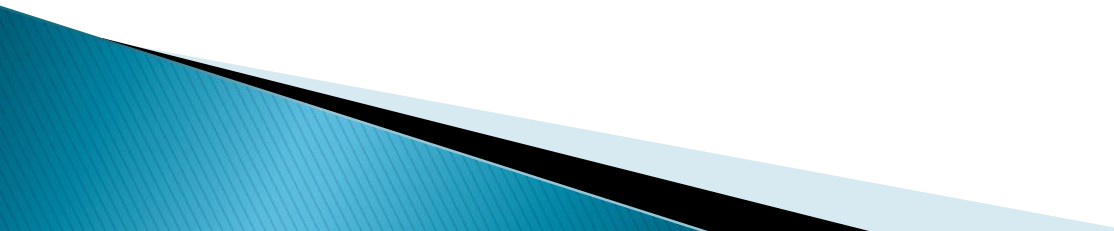
Recent Law Changes

Highlights of State & Federal Law Changes:

- Risk-Based Pricing Notices
 - Mortgage Call Reports
 - MLO Compensation
 - TIL Disclosure Changes
 - Valuation Independence
 - Adverse Action Notices
 - FTC Mortgage Advertising Rule
 - Extension of Pre-Foreclosure Notice Requirements
 - Mortgage Fraud is now a Felony in Michigan
 - Bank Secrecy Act (compliance date 8/13/2012)
- 

Risk-Based Pricing

FTC Rules Part 640 – Effective 1/1/2011

- Provide Risk-Based Pricing Notices to those consumers who do not qualify for the favorable terms available for a specific type of credit product
 - Provide a Credit Score Disclosure to all consumers, even those who receive the most favorable terms
- 

Risk-Based Pricing (Continued)

Risk-Based Pricing Notice

Determine who receives the notice. This has to be done for each specific type of credit product:


- Fixed Rate Mortgages
- Adjustable Rate Mortgages

Three different methods to use in making the determination:

- Direct Comparison
 - Credit Score Proxy
 - Tiered Pricing Method
- 

Risk-Based Pricing (Continued)

Risk-Based Pricing Notice

- Timing – not before approval has been communicated, but before consummation (closed-end) or before the first transaction (open-end)
 - Model Notices – use is not required, however use provides a safe harbor for compliance
 - Notice can be provided in writing, electronically, or orally – Keep in mind, you have to be able to demonstrate compliance
 - Multiple Consumers – one notice to each consumer (If they live together, one notice addressed to both will do)
- 

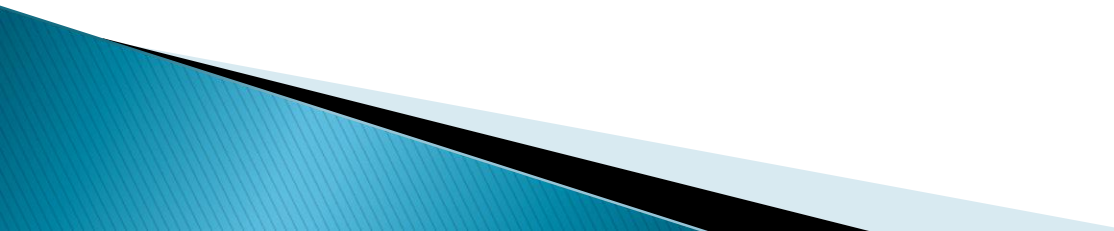
Risk-Based Pricing (Continued)

Credit Score Disclosures

- Must be provided to ALL consumers applying for credit. Must be in a form the consumer can keep
- Model Forms – use is not required but provides a safe harbor for compliance. Form H-3 is for Mortgages (includes FCRA Section 609(g) disclosures). Form H-5 is for no score available
- Timing – at the same time the FCRA Sec. 609(g) disclosures are provided, but before consummation (closed-end) or first transaction (open-end)
- Multiple Consumers – one disclosure to each consumer. Regardless if they live together, disclosures should be addressed and sent separately, as they contain more personal information than the risk-based pricing notice

Mortgage Call Reports

Common Issues

- Not reading the definitions
 - Origination system errors
 - Not verifying information is correct
- 

Mortgage Call Reports (Continued)

Testing for Accuracy & Correcting Mistakes

- Testing for accuracy – “Loans Originated”
This number should be consistent throughout the call report
- Updates to call reports are allowed – NMLS tracks revisions and the changes can be seen

Loan Originator Compensation

Loan Officer Compensation and Steering

- Required by Sec. 226.36(d) of Regulation Z (Eff. 4/6/11)
- Defines loan originator and mortgage broker
- Prohibits compensation based on transaction terms or conditions, except amount of credit extended
- Prohibits compensation from any other person when compensated by borrower
- Prohibits steering a consumer to less favorable terms in order to increase the broker's or loan officer's compensation
- Provides a safe harbor to facilitate compliance with anti-steering

OFIR is not the primary enforcer of this regulation



TIL Disclosure Changes

Reg. Z Sec. 226.18 – Effective 1/30/11 & 10/1/11

- New – Disclosure of payments and interest rates for closed-end transactions to be displayed in a table format (Some of the information in the payment table had an optional compliance until 10/1/11)


Section 226.18(s) has specific requirements on what information has to be displayed for the interest rate and payments for the different types of loans:

- New – A statement that there is no guarantee that the consumer can refinance the transaction to lower the interest rate or periodic payments

Valuation Independence

Reg. Z Sec. 226.42 – Effective April 1, 2011

Valuation Independence Prohibits:

- Coercion designed to cause appraiser to base the appraised value on factors other than their independent judgment
 - Falsifying or materially altering an appraisal
 - Appraisers or appraisal management companies hired from having financial or other interests in the properties or credit transactions
 - Creditors from extending credit based on appraisals if they knew of violations involving appraiser coercion or conflicts of interest, unless the creditor documents it determined the value was not materially misstated
- 

Adverse Action Notices

Equal Credit Opportunity Act – Regulation B
Fair Credit Reporting Act – Section 615

Two different laws, one model form,
how does one comply?

Effective Date: July 21, 2011



Adverse Action Notices (Continued)

<u>Regulation B</u>	<u>Fair Credit Reporting Act</u>
<ul style="list-style-type: none">• Has to be in writing• Required when any adverse action is taken• Law has certain timing requirements• Notice to primary applicant is OK• Oral notifications for small volume creditors <p>Be sure to include the FTC name and address on the form!!!</p>	<ul style="list-style-type: none">• Parts of AAN can be oral, written, or electronic• Only required when adverse action is based upon info in a consumer report• Law doesn't include specific timing requirements• Notice must be provided to "any consumer" who experienced an adverse action• Notices with credit scores must be given separately

FTC Mortgage Advertising Rule

FTC Rule – 16 CFR Part 321 – Eff. 8/19/11

- Bans deceptive claims in mortgage loan advertisements, including but not limited to:
 - Print advertisements
 - Unsolicited e-mails
 - Direct mail marketing
 - Internet ads & websites
 - Telemarketing
 - In-person sales presentation

Pre-Foreclosure Notifications

Effective 7/5/09, sunset extended until 12/31/12

- Pre-foreclosure negotiation law
 - Requires every lender and servicer to work with a homeowner before foreclosure
 - Strict timetable for notification

Slightly different timeframes for accounts where the first default notice was mailed on or after 2/1/2012

For more information: Michigan Foreclosure Prevention Project – <http://miforeclosure.mplp.org>



Mortgage Fraud is a Felony

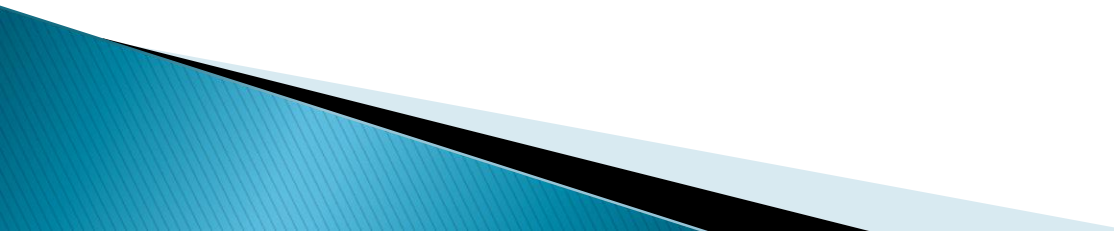
Effective January 1, 2012

- PA 205 – adds residential mortgage fraud to the Penal Code
 - Penalty max – 15 yrs. Prison and/or \$100,000 fine
 - Loan amt. > \$100,000 increased to 20 yrs. prison and/or \$500,000 fine
- PA 203 – increases the statute of limitations from 6 to 10 yrs. for mortgage fraud, and false pretenses involving real property
- PA 204 – makes it a felony to knowingly violate the Notary Public Act in connection with a mortgage transaction
- PA 206 – makes it a felony for a person who alters or forges deeds, discharges, or POA docs involving real property

Bank Secrecy Act


US Treasury's Financial Crimes Enforcement Network (FinCEN) – 31 CFR Parts 1010 & 1029

**** Effective 4/16/12 w/ Compliance by 8/13/12**

- Anti-Money Laundering (AML) Programs
 - Filing of Suspicious Activity Reports (SARs)
 - Requirements apply to all Residential Mortgage Loan Originators & Lenders
- 

Bank Secrecy Act (Continued)

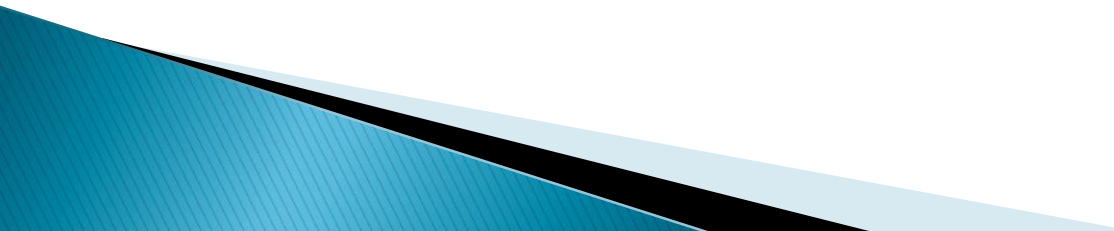
Anti-Money Laundering Program Elements

- Adoption of risk-based written policies, procedures & internal controls
 - Designation of a responsible compliance officer
 - Ongoing training of staff, including non-employee agents and brokers (if used)
 - Periodic independent testing to monitor & maintain an adequate AML Program
 - Obtaining specific information in connection w/ each transaction
 - Recordkeeping
- 

Bank Secrecy Act (Continued)

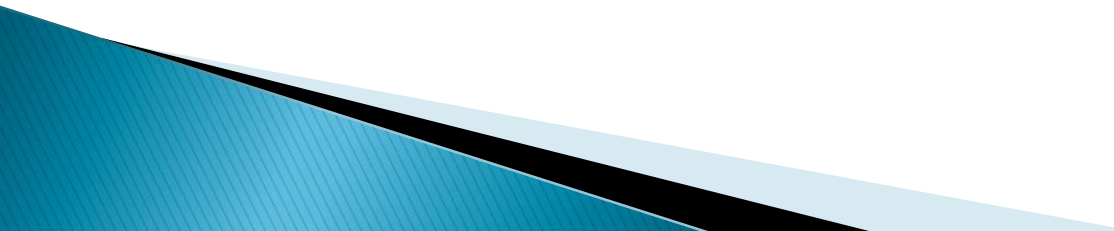
When are SARs required?

Transactions involving at least \$5,000, if one of the following are met:

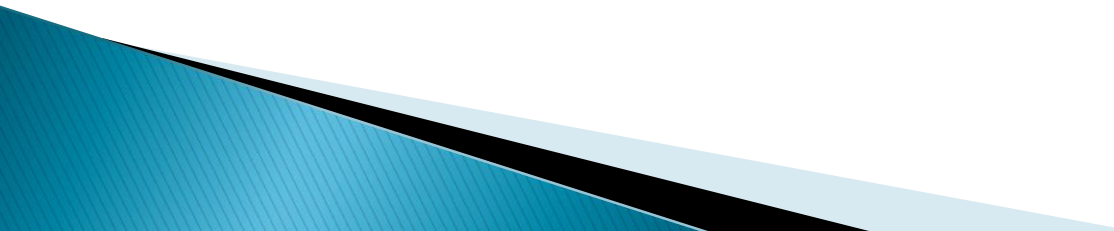
1. Involves funds derived from illegal activity
 2. Designed to evade any requirement of BSA
 3. No business or apparent lawful purpose
 4. Involves the use of the RMLLO to facilitate criminal activity
- 

Bank Secrecy Act (Continued)

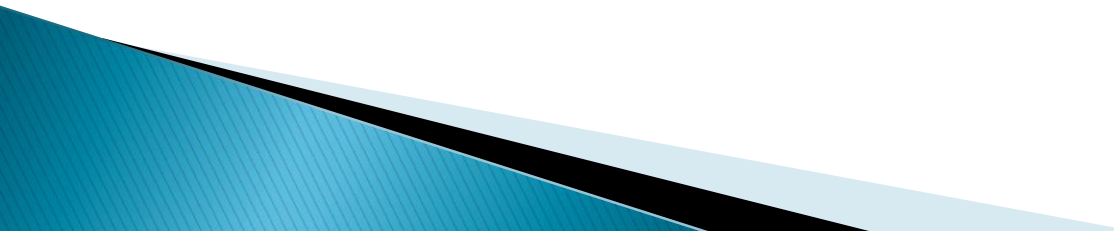
Additional Information:

- Record retention – 5 yrs. from date of filing
 - SAR filing will be electronic eff. 7/1/12
 - SAR filers are prohibited from disclosing a SAR – except this can be disclosed to federal & state regulators
 - Joint SAR filing are allowed for multiple institutions involved in the same transaction
- 

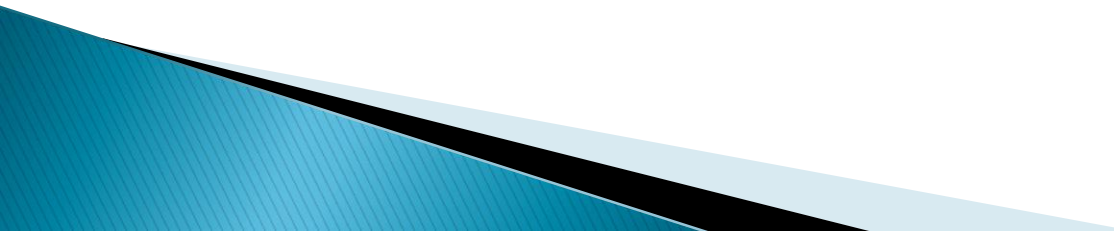
Common Violations

- Mortgage Loan Originator unlicensed activity issues
 - Originating loans w/o a license
 - Loan modification staff not licensed
 - Processors not licensed
 - MLO NMLS ID # not on applications, websites, business cards, and other advertisements
- 

Common Violations (Continued)

- Not maintaining adequate books and records
 - Record Retention
 - Application Log
 - Revised GFEs & Changed Circumstance Documentation
 - Overcharges
- 

Common Violations (Continued)

- ▶ Not signing and dating the 1003
 - ▶ Use of an unlicensed name
 - ▶ Not having the correct license for the type of business being conducted
 - ▶ Not maintaining proper net worth
 - ▶ Not having a written safeguard program and/or ID theft prevention program
- 

Common Violations (Continued)

ID Theft Prevention Program FTC Rules Part 681.2 Compliance Date: 1/1/11	Safeguard Security Plan FTC Rules Part 314.3 & 314.4 Compliance Date: 5/23/03
<p>Written ID theft prevention program designed to <u>detect</u>, <u>prevent</u>, & <u>mitigate</u> ID theft</p> <p>Must obtain approval from the board of directors for program and involve the board or sr. mgt. in oversight, development, implementation, and administration of the program</p>	<p>A comprehensive written “information security program” that contains <u>administrative</u>, <u>technical</u>, & <u>physical</u> safeguards to insure the security & confidentiality of customer information, protect against any anticipated threats or hazards, and protect against unauthorized access or use of customer information</p>

Common Violations (Continued)

ID Theft Prevention Program

Elements of the Program

- Identify relevant red flags
- Detect red flags identified
- Respond appropriately to red flags detected
- Update the program periodically to reflect changes in risks to customers & the company

Safeguard Security Plan

Elements of the Program

- Designate one or more employees to coordinate the program
- Identify and assess internal and external risks
- Design & implement safeguards to control risks identified
- Regularly test and monitor effectiveness of the program
- Oversee service providers
- Evaluate & adjust program as necessary

Common Violations (Continued)

Missing Required Pamphlets & Notices


MLPA – Lending Criteria Pamphlet

Notice to Inquirers and Loan Applicants

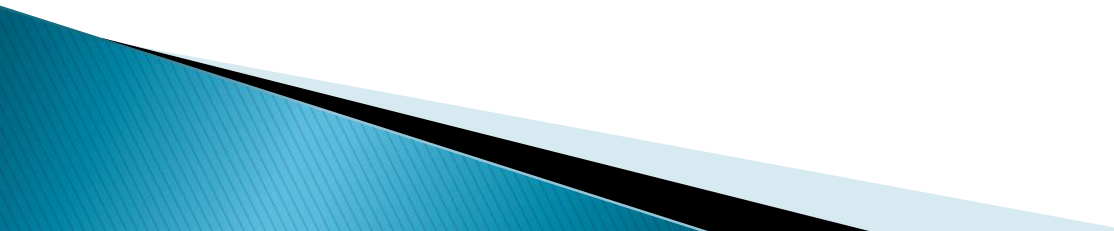
Reg. X – Special Information Booklet “Shopping for Your Home Loan: CFPB’s Settlement Cost Booklet”

Reg. Z – CHARM Booklet

HELOC Booklet: “When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit”



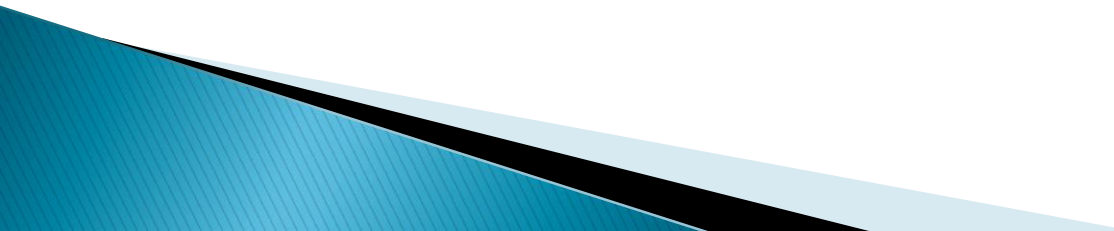
Common Violations (Continued)

- ▶ Not Complying with the Consumer Mortgage Protection Act
 - Not providing the Borrowers Bill of Rights
 - Not providing the Consumer Caution & Home Ownership Counseling Notice
 - Not providing a list of nearest available HUD–Approved Credit Counseling Agencies
- 

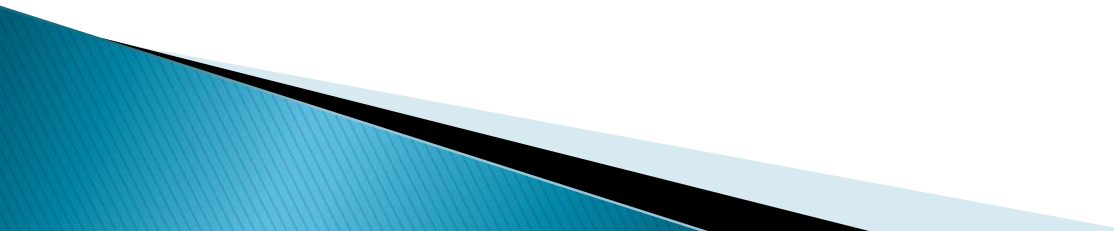
Where Can I get Copies of the Statutes?

- ▶ State laws available on OFIR website
- ▶ Federal laws on HUD, Federal Reserve and FTC websites

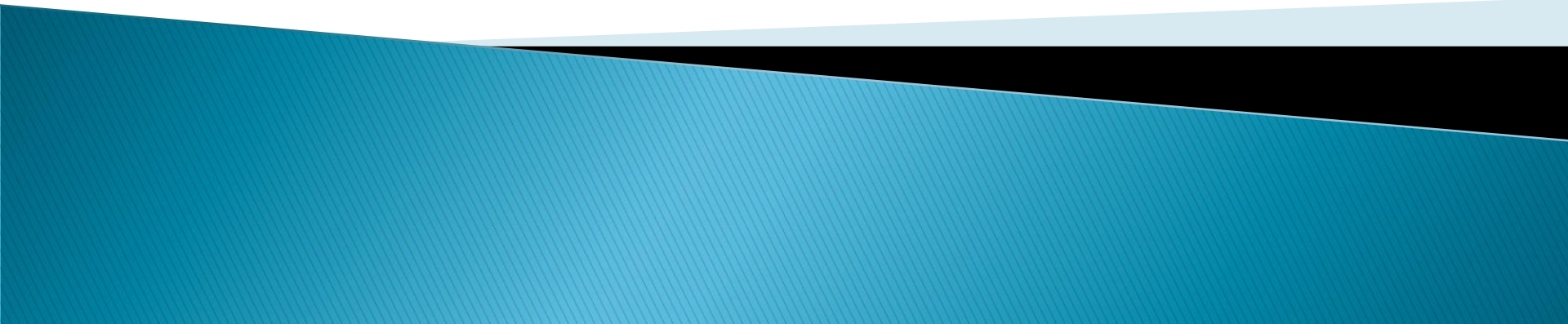
What if I have questions?

- ▶ Review the statute
 - ▶ Legal counsel
 - ▶ Regulator
- 

What Can You do to be in Compliance?

- ▶ Know the laws
 - ▶ Maintain adequate control and supervision of operations
 - ▶ Maintain written policies and procedures (and put them into practice)
- 

ENFORCEMENT



ENFORCEMENT & CONFIDENTIALITY


Our Goal: To ensure mortgage
companies comply with the law



Who is Subject to Enforcement Action?

- Licensee or Registrant
- Person who is supposed to be licensed or registered
- Employee, agent or control person
 - Prohibition Order

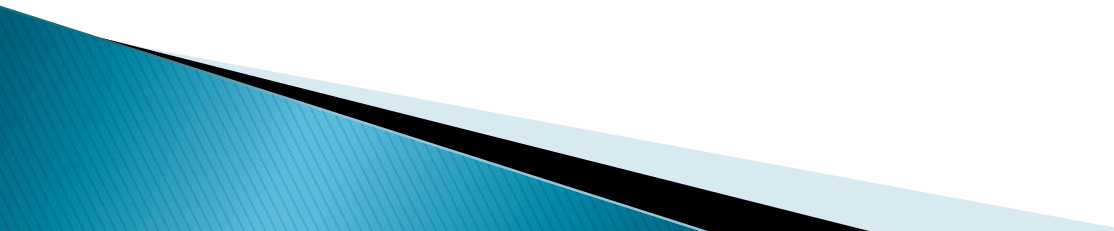
What Types of Enforcement Actions and Penalties May Apply?

- 1st and 2nd Mortgage Acts
 - Civil fine up to \$3,000 per violation
 - Mortgage Loan Originator Licensing Act
 - Civil fine up to \$25,000 per violation
 - Restitution to individuals injured or harmed
 - Cease and Desist Order
 - Revoke or suspend a license
 - Summarily suspend a license or registration
- 

How Does OFIR Determine if a Violation has Occurred?

- ▶ Information derived from:
 - Examinations and Investigations
 - Complaints
 - From Attorney General, Commissioner or any person

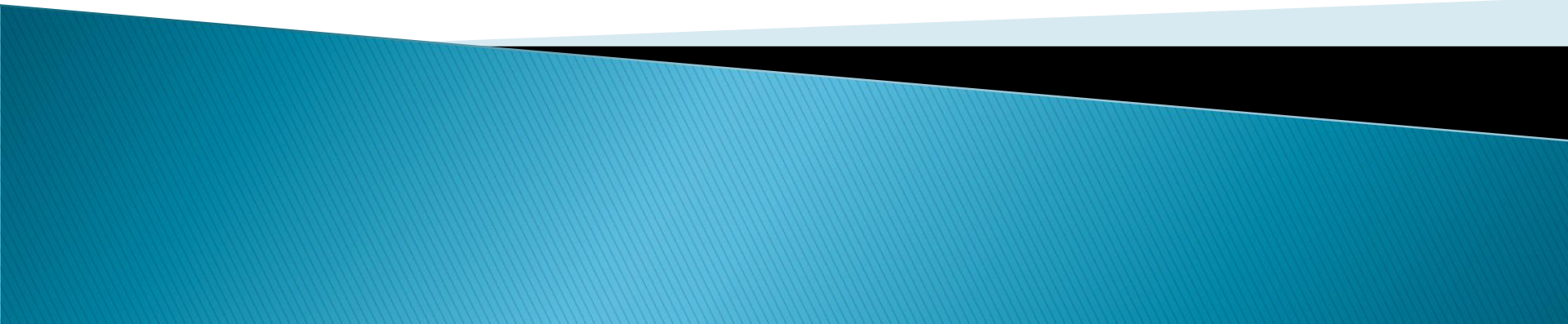
What Happens When a Violation Occurs?

- Initiate administrative proceeding
 - Against licensee or registrant
 - Against an employee, agent, or control person
 - Refer to Attorney General for lawsuit
 - Do both
- 

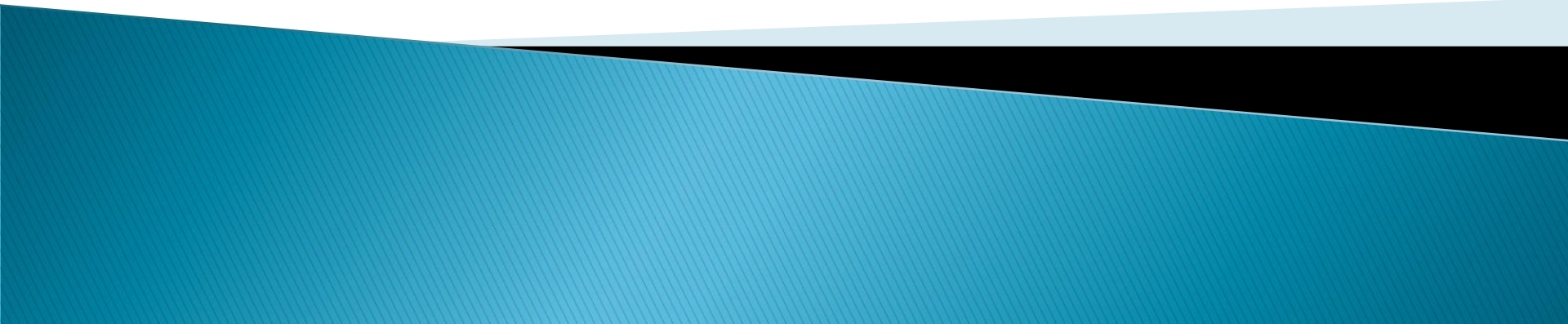
The Notice of Opportunity to Show Compliance (NOSC)

- ▶ Following an Exam or Investigation, Commissioner may issue a Notice of Opportunity to Show Compliance

What Results from an NOSC Meeting?



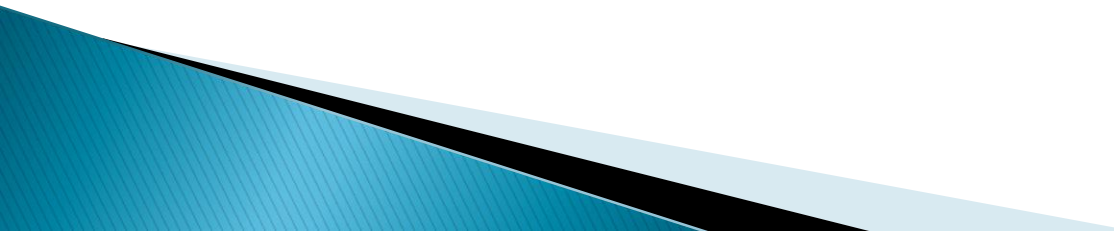
**Does a Company Need a
Lawyer to Represent it at an
Informal Conference?**



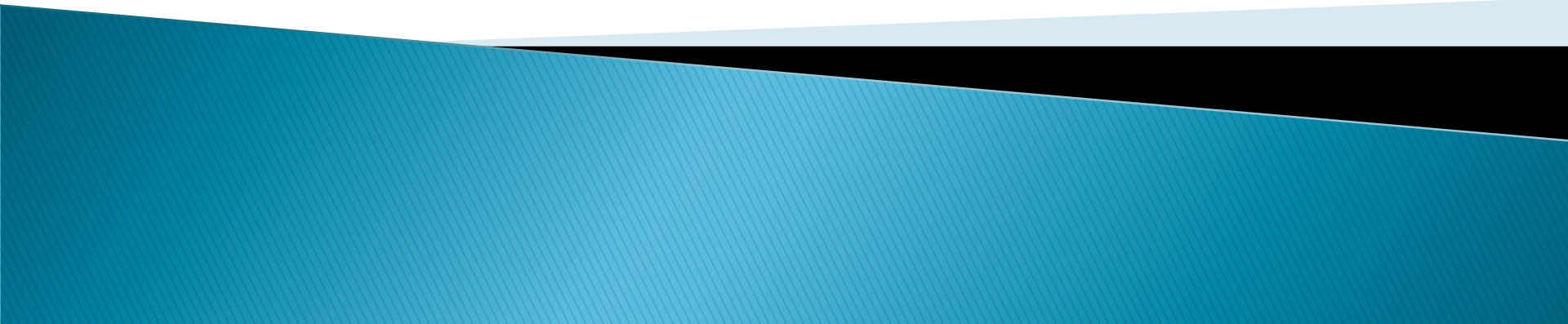
What Happens When a Violation has Occurred and the Matter is not Resolved at the NOSC Stage?

- Issue Cease & Desist Order
 - Issue a suspension or revocation
- 

Commissioner May Also:

- Issue Order of Summary Suspension of license
 - Refer to Attorney General or County Prosecutor for criminal prosecution
- 

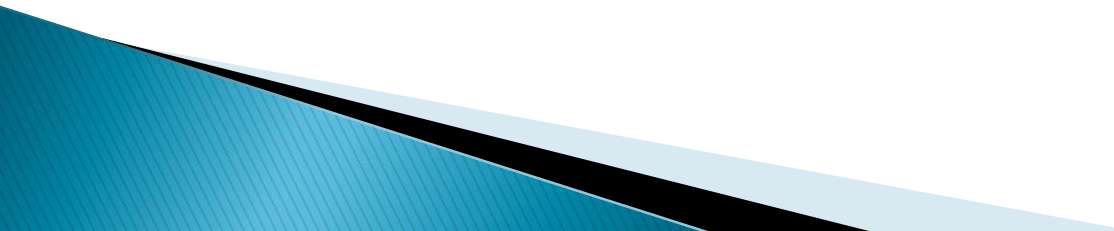
Does a Company Need a Lawyer to Represent it at an Administrative Hearing?



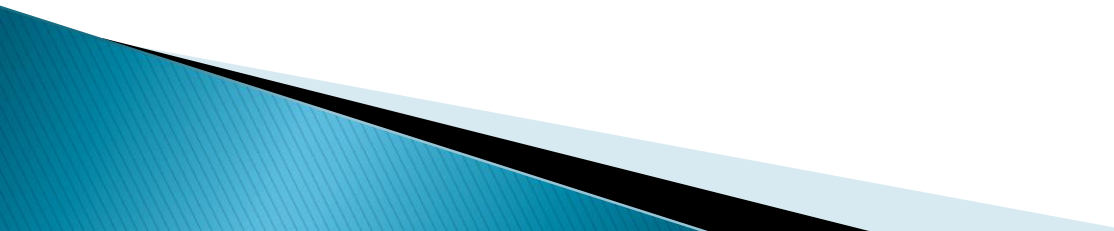
Settlements

- ▶ Stipulation & Consent Order

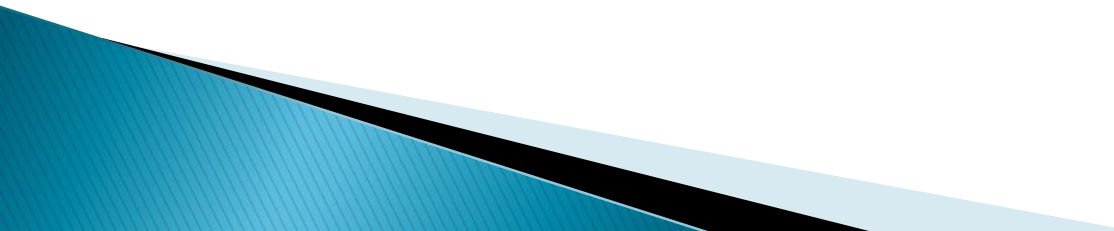
What Happens Between the Conclusion of an NOSC Meeting and Administrative Hearing?

- Administrative Law Judge (ALJ) is assigned
 - Hearing Officer may order a pre-hearing conference
 - Parties may file pre-hearing motions
 - Lawyers may take depositions
 - Lawyers may discuss possible settlement
- 

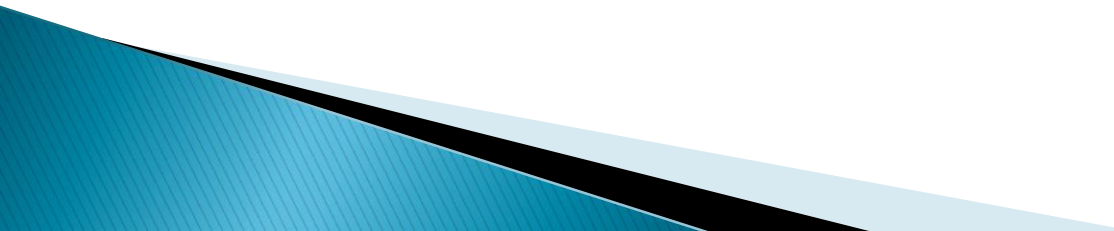
What Happens During an Administrative Hearing?

- ALJ presides
 - OFIR will be represented by an OFIR lawyer or an Assistant Attorney General
 - Burden of going forward is on OFIR
 - Opening statements & closing statements
 - Examination & cross examination of witnesses
- 

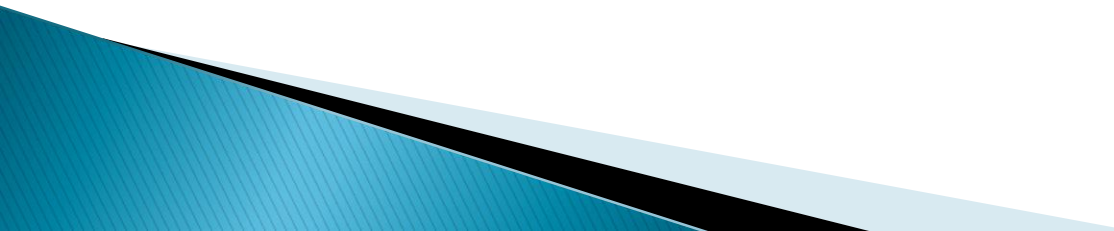
What Happens During an Administrative Hearing? (Continued)

- Documents will be offered into evidence
 - Motions and Objections
 - ALJ will issue Proposal for Decision
 - Opportunity to File Exceptions
 - Commissioner will issue Final Decision
 - Any appeal of Commissioner's Final Decision will be in Ingham County Circuit Court
- 

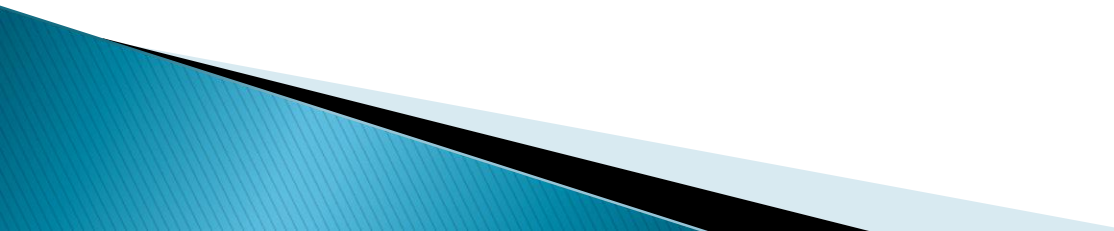
Criminal Violations: Attorney General or County Prosecutor Enforces

- Broker, lend or service without a license
 - Transfer or assign a loan before disbursement
 - Transfer or assign loan to individual investor
 - Penalty: 1 year incarceration and \$15,000 fine
- 

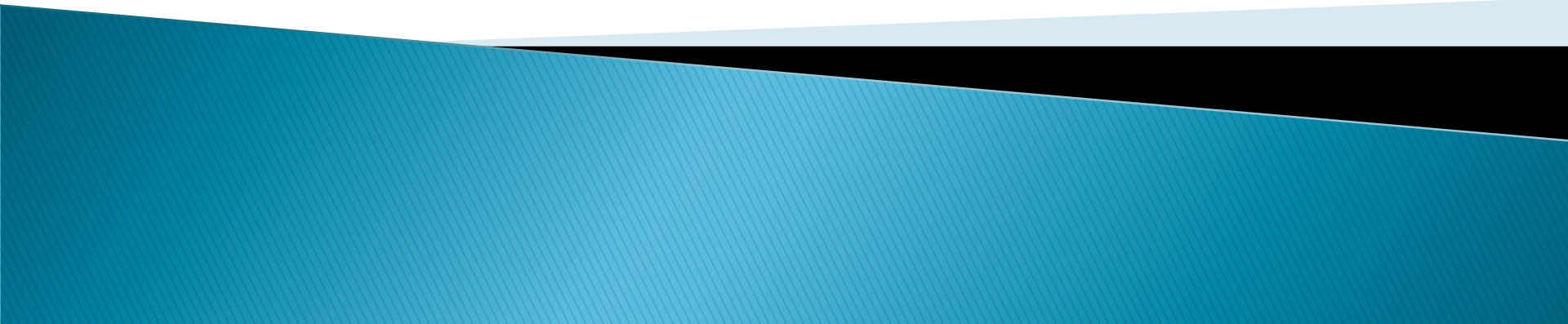
Prohibition Orders – Affects Individuals Who Engage in Fraud

- Notice of Intention to Prohibit
 - Order of Summary Suspension
 - Hearing will be scheduled
 - Final Decision and Order
 - Prohibition Order is permanent unless terminated by the Commissioner
 - Person may not apply to terminate the Order for 5 years
- 

Prohibition Orders

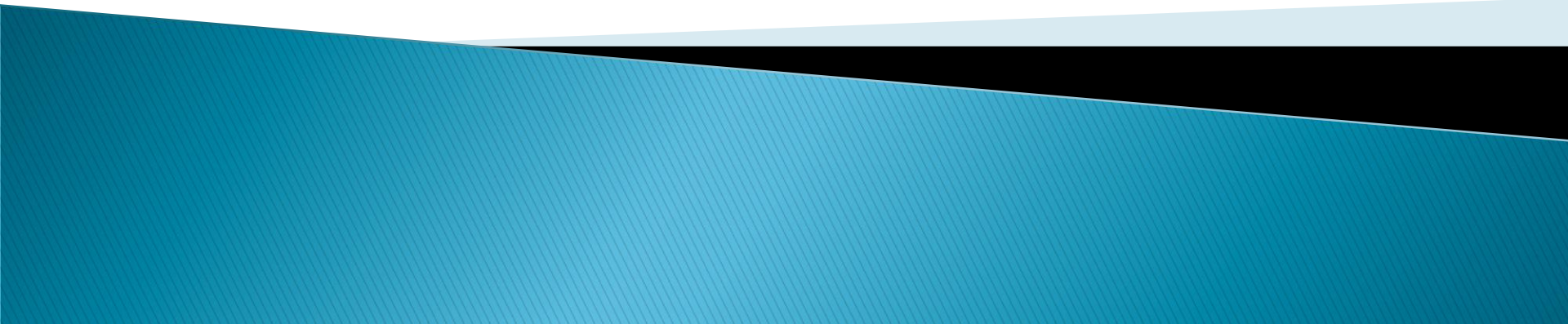
- Felony involving fraud, dishonesty, or breach of trust
 - Prohibition Order is enforced in Ingham County Circuit Court
 - Violation of Commissioner's Final Order is a crime
 - A control person must divest ownership
- 

Conservatorships



No Relief From Civil or Criminal Liability

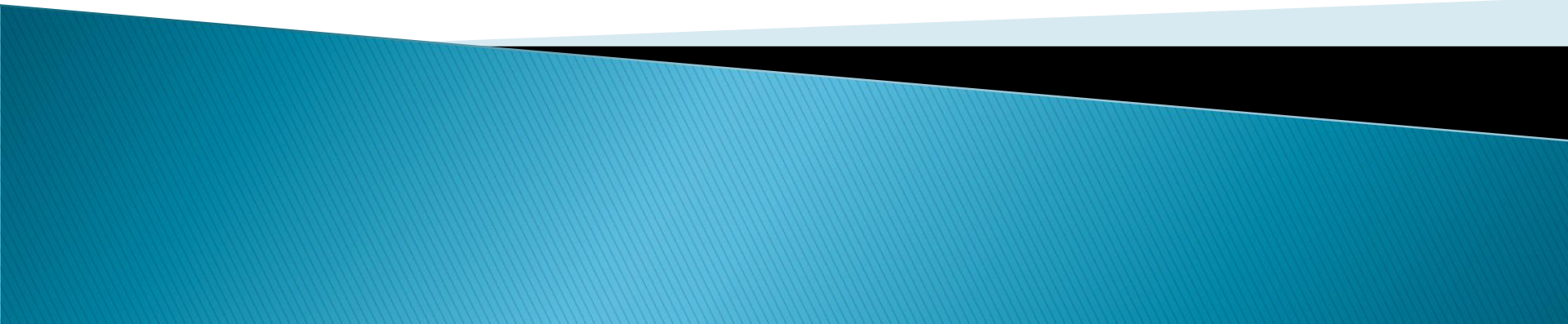
Remedies are Cumulative



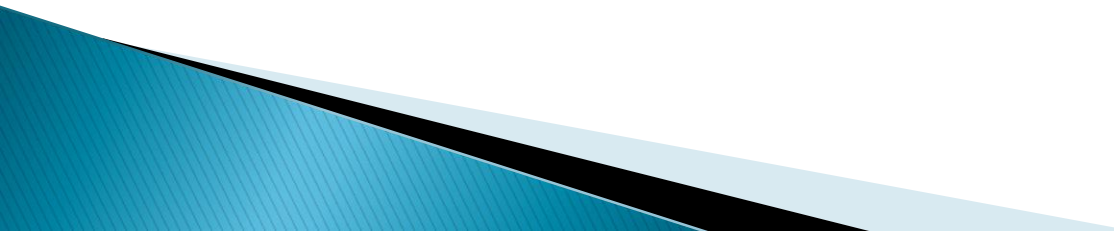
Agents of Both Lenders and Insurers

- Insurance Code Section 1243
- Federal Gramm Leach Bliley Act

Confidentiality of Records and Information in OFIR's Possession



What is Disclosable?

- Licensee applications
 - Names, address, phone number of licensee
 - Copies of licenses and registrations
 - Required reports
 - Proposals for Decision
 - Orders and rulings
 - Other documents at the Commissioner's discretion
- 

What is Exempt from Disclosure?

- Examination reports
- Internal communications
- Personal information
- Information OFIR indicates it will retain in confidence
 - However, Commissioner may disclose information to Attorney General, law enforcement officials and other regulators

Q & A's

THANK YOU FOR ATTENDING TODAY'S SEMINAR

Further information can be obtained through the OFIR website or by contacting OFIR staff.

